

1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON  
2 AT TACOMA

3  
4 UNITED STATES OF AMERICA,  
5 Plaintiff,

Case No. CR21-5213

6 v.  
7 KENDLE RASHEN HAWKINS,  
8 Defendant.

DETENTION ORDER

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11  
12 THE COURT, having conducted a detention hearing pursuant to 18 U.S.C.  
13 Section 3142, finds that no condition or combination of conditions which defendant can  
14 meet will reasonably assure the safety of any other person or the community; nor are  
15 there conditions that would reasonably assure the defendant would be less likely to flee  
16 or fail to appear for court proceedings. The defendant is represented by Timothy Rusk.  
17 The government is represented by Assistant United States Attorney Lyndsie Schmalz.

18 The defendant is charged by Indictment with Possession of Fentanyl with Intent  
19 to Distribute. Dkt. 13.

20 The Court heard information and argument presented during the detention  
21 hearing on July 1, 2021, and information provided by the Pretrial Services Officer,  
22 Leona Nguyen including the pretrial services reports.

23 The current charge, involving a drug crime with a maximum sentence of 10-  
24 years or more, triggers the rebuttable presumption of detention, that "no condition  
25 or combination of conditions will reasonably assure the appearance of the person  
26 as required and the safety of the community." 18 U.S.C. § 3142(e)(1). The  
27 presumption operates to shift the burden of production to the defendant. *United*  
28 *States v. Hir*, 517 F.3d 1081, 1086 (9<sup>th</sup> Cir. 2008). The prosecution has the burden  
29 of persuasion. *Id.* If the defendant proffers evidence to rebut the statutory

1 presumption, this does not mean the presumption has been erased; it simply  
2 means the presumption is an evidentiary finding that militates against release, and  
3 is weighed along with the other factors identified in 18 U.S.C. § 3142(g). *United*  
4 *States v. Hir*, 517 F.3d at 1086.

5 The factors identified in 18 U.S.C. § 3142(g) are: 1. Nature and seriousness  
6 of the charges; 2. Weight of the evidence against the defendant; 3. History and  
7 characteristics of the defendant; and 4. “Nature and seriousness of the danger to  
8 any person or the community that would be posed by the person’s release.” 18  
9 U.S.C. § 3142(g)(1)-(4). The Bail Reform Act recognizes that release should be  
10 the normal course, and “detention prior to trial or without trial is the carefully limited  
11 exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). In evaluating  
12 whether the defendant poses a serious potential for dangerousness, it is not  
13 necessary for the Government to produce, or for the Court to rely on, evidence of  
14 prior convictions for violent crimes. *United States v. Hir*, 517 F.3d at 1091-92.  
15

16 Based on the nature circumstances of the alleged offense, history of the  
17 defendant, and the defendant’s failure to give accurate information to the pretrial  
18 services officer, the Court finds the government met its burden of proving by clear  
19 and convincing evidence that the defendant presents a significant risk of danger  
20 to others or to the community and its burden to prove, by a preponderance of the  
21 evidence, the defendant presents a significant risk of flight. Further, the danger to  
22 the community and risk of flight cannot be mitigated by any condition or  
23 combination of conditions which Mr. Hawkins can meet.

24 Mr. Hawkins is presumed innocent. 18 U.S.C. § 3142(j). Additionally, Mr.

1 Hawkins has proposed potential release plans. Dkt. 11 at 2. Further, Mr. Hawkins was  
2 supported at the detention hearing by acquaintances willing and prepared to support  
3 him with a place to stay through trial.

4 However, the nature of the current offense as described in the Complaint, Dkt. 1,  
5 and as asserted by the Assistant United States Attorney during the hearing, presents a  
6 grave danger to the community. Mr. Hawkins is alleged to have been transporting  
7 approximately 50,000 narcotics pills, which field tested presumptive positive for the  
8 presence of fentanyl. Dkt. 1 at 10. The quantity of pills Mr. Hawkins was alleged to be  
9 transporting is “well in excess of personal use amounts” and “consistent with  
10 possession for distribution.” Dkt. 1 at 11. In addition to 50,000 narcotics pills that field-  
11 tested positive for fentanyl, Mr. Hawkins is alleged to have been transporting one rifle,  
12 four handguns, two firearms suppressors, two magazines, and one high capacity drum  
13 magazine. Dkt. 1 at 10. The Assistant United States Attorney proffered, during the  
14 detention hearing, that fentanyl is an incredibly deadly controlled substance and  
15 overdose deaths from use of this drug are increasing in the Western District of  
16 Washington.

17 Mr. Hawkins past conduct and criminal history also indicate he represents a  
18 threat to the safety of the community. The Defendant has prior convictions for armed  
19 robbery and marijuana possession. Dkt. 11 at 4. These past convictions are considered  
20 when evaluating the “history and characteristics of the person” who is the subject of the  
21 detention hearing. 18 U.S.C. § 3142(g)(3).

22 Mr. Hawkins has also been inconsistent with information he has given to pretrial  
23 services regarding his: 1. prior residences; 2. sources of income; and 3. assets. Dkt. 11  
24 at 3, 5. Mr. Hawkins and the other individuals contacted by the pretrial services provided  
differing descriptions of where Mr. Hawkins lived and if he was transiently housed. Dkt.

1 11 at 5.

2       Pretrial services officers were also unable to verify the existence of a dog  
3 breeding business Mr. Hawkins claimed was his source of employment. Dkt. 11 at 3.  
4 Mr. Hawkins also claimed the contents of a bank account as his only asset. Dkt. 11 at 3.  
5 This was contradicted by an acquaintance of Mr. Hawkins who told pretrial services  
6 officers Mr. Hawkins also owned a BMW vehicle and an SUV. Dkt. 11 at 3. This lack of  
7 credibility shows by preponderance of the evidence that Mr. Hawkins would have  
8 difficulty following conditions of supervision and presents a risk of non-appearance or  
9 presents a risk of flight, because he did not disclose important information, or mis-stated  
10 information, and failing to cooperate with pretrial services in their requests for accurate  
11 information is of great concern to the Court. He also has a prior FTA. Dkt. 11 at 4.

12       The Court does not find that any of the release plans proposed by Mr. Hawkins  
13 would mitigate the risk of dangerousness or risk of failure to appear. The Court agrees  
14 with the pretrial services assessment that Mr. Hawkins is not likely to comply with  
15 conditions of supervision, and poses a risk of failure to appear and a risk of flight, based  
16 on his failure to be forthright with the pretrial services officers. Dkt. 11 at 5.

17       The Court finds: The government met its burden of proving by a preponderance  
18 of the evidence that the defendant presents a significant risk of failure to appear. The  
19 government also met its burden of proving by clear and convincing evidence that the  
20 defendant presents a significant risk of danger to others and to the community, and  
21 there are no condition or combination of conditions which defendant can meet that will  
22 reasonably assure the safety of any other person and the community, or the  
23 appearance of the defendant.

24 This finding is based on:

- 1) the nature and circumstances of the offense(s) charged,

1 2) the weight of the evidence against the person;

2 3) the history and characteristics of the person;

3 4) criminal history; and

4 5) the nature and seriousness of the danger release would impose to any person or the

5 community, including a history of repeated offenses

6

7 *Order of Detention*

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9 < The defendant shall be committed to the custody of the Attorney General for

10 confinement in a corrections facility separate, to the extent practicable, from

11 persons awaiting or serving sentences or being held in custody pending appeal.

12 < The defendant shall be afforded reasonable opportunity for private consultation

13 with counsel.

14 < The defendant shall on order of a court of the United States or on request of an

15 attorney for the Government, be delivered to a United States Marshal for the

16 purpose of an appearance in connection with a court proceeding.

17 Dated this 2nd day of July 2021.

18 

19 Theresa L. Fricke  
20 United States Magistrate Judge

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